
(2023) 08 KL CK 0222

In the High Court Of Kerala

Case No : Writ Petition (C) No. 17363 Of 2023

M/s RDS Projects Ltd

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 23-08-2023

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2023) 08 KL CK 0222

Hon'ble Judges : Viju Abraham, J

Bench : Single Bench

Advocate : P.Martin Jose P., P. Prijith, Thomas P.Kuruvilla, R.Githesh, Ajay Ben Jose, Manjunath Menon, Sachin Jacob Ambat, Anna Linda Eden, Harikrishnan S. S.Sreekumar, K.V.Manojkumar

Final Decision : Dismissed

Judgement

Viju Abraham, J.

1. The above writ petition is filed challenging Ext.P49 order whereby the petitioner was blacklisted, barring the petitioner from quoting for any work for a period of 5 years.

The brief facts necessary for the disposal of the above writ petition are as follows:

2. The petitioner is a company incorporated under the Companies Act, 1956 and it is a leading engineering and general contracting company, offering building solutions for a broad range of construction and engineering projects since 1992. The petitioner submits that it has completed over 100 projects throughout India, out of which 45 projects are in Kerala, of which 23 are construction of bridges. The Petitioner Company has also received quite a lot of appreciation for its endeavors in the field of construction and was also awarded for excellence in construction. It is submitted that the Roads and Bridges Development Corporation (hereinafter referred to as RBDCK) invited tenders for the construction of a flyover in N.H.66 at Palarivattom, Ernakulam. The petitioner

was awarded the said work being the lowest tenderer and executed Ext.P3 agreement dated 04.03.2014. The site was handed over on 01.06.2014 and the work has to be completed within 24 months from the date of agreement. The petitioner submits that the structural work except the wearing coat was completed by June 2016 before the onset of the monsoon. The petitioner submits that since the inauguration of the flyover was scheduled to be held on 12.10.2016, the petitioner was forced to complete the wearing coats in monsoon period itself. Therefore, the petitioner completed the work by 20.09.2016. In view of the urgency, bituminous wearing coats were done in wet conditions and therefore the wearing coat compaction by maintaining temperature was not possible and this resulted in developing potholes and the bituminous layer got damaged progressively due to the increase in traffic. Due to the development of potholes, water stagnation and dust collection occurred on the expansion joints, thereby choking the movement of deck continuity expansion joints. As deck continuity joints were not functioning, additional stress developed in girders and pier caps. The petitioner also submits that there was an error in the approved drawings in the placement of bearings in 2 spans, P9-P10, P18-AP2. Since the above said defects happened due to the formation of the potholes and stagnation of water could be remedied forthwith, the matter was reported to the structural consultant, M/s. Nagesh Consultancy for their expert advice. The consultant inspected the site along with the representatives of RBDCK and KITCO and forwarded their drawings for the rectification of joints. A review meeting was held by RBDCK on 16.11.2016 and as per Ext.P5 minutes, it was decided to take corrective steps to rectify the expansion joints between two strip seal expansion joints. As per the decision in the meeting held on 16-11-2016, the balance drain works were started on 18.11.2016. Based on the views of the consultant, Exts.P6 and P7 requests were made by the petitioner, but the same was not considered and permission for rehabilitation as suggested in Exts. P6 and P7 at its own costs was never heeded to, but the traffic continued to ply. Thereupon, Ext.P8 communication was also sent by the petitioner. In Ext.P8, it was also intimated that purchase orders were placed with M/s. Sanfield India Pvt. Ltd. for the supply of the bearings and the materials were fabricated and ready for inspection. Later on, the POT bearing and strip seal expansion joints required for replacement at deck continuity joints were tested by the manufacturers on 10.10.2017 and 11.10.2017 at the factory of M/s. Sanfield India Pvt. Ltd., Bhopal in the presence of the representatives of the Government and RBDCK. It was also informed that the deck continuity joint is not withstanding the traffic and it was decided to introduce strip seal expansion joint. By Ext.P9 the test result of M/s. Sanfield and the mobilization of specialized agency were also brought to the notice of RBDCK and KITCO. As requested by the petitioner, Dr. Aravindan, retired professor of IIT and Head of M/s.Sree Giri Consultants along with his team inspected the flyover on 07.11.2016 and 29.10.2017 and prepared a detailed structural design check and submitted Ext.P11 report before the RBDCK. Even though as per Clause 20.2 of the agreement dated 04.03.2014, it is the responsibility of the petitioner to rectify any defects during the defect liability period at his own cost to the

satisfaction of Engineer/KITCO, in spite of intimation to RBDCK through several communications regarding the nature of defects and the methodology to rectify the same, RBDCK never took any action or any steps so as to enable the petitioner to execute such works at its expense. On the basis of the same, it is contended by the petitioner that RBDCK has committed breach of contract and that the petitioner is never liable to rectify or compensate with regard to any defects which are the result of blatant violation of provisions of the agreement executed with RBDCK. Without considering the various proposals submitted by the petitioner for rehabilitation of the flyover which was approved by the Engineer, the RBDCK engaged IIT Madras to carry out the assessment of the condition of the flyover and to suggest the rehabilitation measures. The IIT Madras after conducting a scientific study approved the methodology for bearing replacement for span P18-AP2 submitted by KITCO. By Ext.P12 letter dated 19.03.2019, IIT Madras informed the RBDCK about the corrected methodology submitted by the Engineer approved by IIT Madras. Thereupon by letter dated 28.03.2019, RBDCK directed the petitioner to conduct the repairs as per the methodology suggested by KITCO and approved by IIT Madras in its letter dated 19.03.2019. The petitioner submits that the methodology approved by IIT Madras was the same in essence as the methodology submitted by the petitioner and the inordinate delay in engaging IIT Madras and approving the methodology was not attributable to the petitioner. The petitioner contends that even the report of IIT Madras only recommended for rehabilitation of the flyover since the flyover was not in such distress so as to be demolished. RBDCK, despite the long requests of the petitioner for traffic closure, finally by Ext.P14 letter intimated the petitioner for the traffic closure with effect from 01.05.2019. The petitioner completed the repairs as instructed by the IIT as suggested in Ext.P13 under the supervision of IIT and RBDCK and the expert panel of three Chief Engineers deputed by the State. The petitioner expended Rs.2.63 Crores for the repair works. All the repair works as specified by RBDCK were commenced on 01.05.2019 and completed on 02.06.2019 under the supervision of the representatives of the Engineer and Dr. P. Alagasundaramoorthy of IIT, Madras except for the expansion joint of the span P18-AP2, since the work was stopped by RBDCK. The petitioner by Ext.P15 letter informed RBDCK and KITCO that the site was ready for the replacement of the final bearing in span P18-AP2 and sought permission for the completion of all the rectification works by 05.08.2019. The petitioner, again by Ext.P16 dated 18.09.2019 intimated RBDCK for completion of the balance work of the expansion joint at span P18-AP2, but no reply or response has been evoked to the said letters. Petitioner submits that it appears that being dissatisfied with the inspection report and remedial measures of IIT Madras, the Government of Kerala sought clarification from Dr. E Sreedharan, the Principal Advisor of Delhi Metro Rail Corporation (DMRC) and that Dr. E Sreedharan without conducting much scientific study and even without conducting any physical verification submitted reports dated 03.07.2019, 14.09.2019 and 19.09.2019 contrary to the report of IIT Madras. Dr. E. Sreedharan, submitted a recommendation dated 03.07.2019 before the

Government of Kerala for the rehabilitation of the bridge by dismantling 17 RCC spans and to replace with PSC girders. Thereby Government of Kerala constituted a committee to examine the reports of IIT Madras and Dr. E.Sreedharan and the committee so constituted, without conducting any scientific study, submitted a report dated 04.10.2019. Without reference to the contractual obligations in pursuance of the agreement dated 04.03.2014, and especially Clause 49.2(b), Clause 49.4 and Clause 50.1 of Part I of the General Conditions of the contract, the Government of Kerala as per Ext.P17 order dated 25.10.2019 accepted the recommendation of the technical committee, appointed by the Government to resolve the dispute in the conflicting reports of IIT Madras and Dr. E Sreedharan, and further accepted the offer of DMRC to take over the bridge for rehabilitation and further directed the RBDCK to realize the loss sustained from the petitioner in the light of the reports of IIT Madras, Dr. E.Sreedharan and FIR in vigilance case No.1 of 2019 of the Court of Vigilance and Anti-Corruption Bureau, Muvattupuzha. The petitioner has a specific case that if at all any rehabilitation of the flyover is required, necessarily RBDCK has to invoke Clause 49.2(b) of Part I of the General Conditions of Contract. As a matter of fact, after obtaining the report of the Technical Committee, the Government of Kerala has accepted the offer of DMRC for rehabilitation of the Flyover, which is in total violation of the above-stated clause in the agreement executed between the petitioner and RBDCK. The petitioner challenged Ext.P17 order by filing W.P.(c) No. 30487 of 2019 and this Court was pleased to stay all coercive action including the attachment of the bank account of the petitioner. The petitioner also filed another writ petition, WP(C) No.26030 of 2019 seeking a direction to conduct a load test on the bridge. The above writ petition came up for hearing along with other writ petitions on 21.11.2019 and this Court as per Ext.P19 common order directed the Government to conduct load test of the Palarivattom Flyover at the expense of the petitioner. Aggrieved by Ext.P19, the Government approached the Apex Court in SLP(Civil) Nos.3008-3015 of 2020. The Apex Court as per Ext.P20 judgment set aside Ext.P19 common order passed by this Court directing to conduct load test. Pursuant to Ext.P20 judgment by the Apex Court, the Government of Kerala issued Ext.P21 Order granting administrative sanction for the rehabilitation of the Palarivattom Flyover through M/s Delhi Metro Rail Corporation (DMRC) with a further direction to realise the cost of the rehabilitation from the petitioner. The specific contention of the petitioner is that the Government has no right or authority to engage DMRC to do the rehabilitation work, especially when the contract between the petitioner and RBDCK was subsisting. Petitioner submits that RBDCK committed several instances of breach of the agreement and has shown reluctance in permitting the petitioner to carry out the rectification works. These aspects were pointed out to RBDCK by the petitioner as per Ext.P22 letter. Since RBDCK has violated the terms and conditions envisaged in the agreement, the petitioner has filed a suit as C.S.No.80 of 2021 before the Commercial Court, Ernakulam seeking recovery of the amount due to the petitioner and for a declaration that the Government orders dated 25.10.2019 and 07.10.2020 (Exts.P18 to P21) are illegal, ab initio

void and non-est in law. The petitioner further submits that the RBDCK has also instituted a suit as C.S No. 240 of 2022 before the Commercial Court, Ernakulam for the realization of a sum of Rs.24,52,22,498/- being the alleged loss incurred in the demolition and re-construction of the Flyover. Petitioner submits that in connection with another work tendered by the petitioner, which was a joint venture, the Government decided to exclude the L1 bid of the Joint Venture of the petitioner alleging irregularities and registration of vigilance case in connection with the construction of the Palarivattom Flyover. Thereupon the petitioner has approached this Court by filing W.P.(C) No. 31556 of 2019, which was disposed of as per Ext.P31, wherein it was held that the blacklisting proceedings shall be initiated and completed within a time limit and if it is found that the petitioner is liable to be blacklisted, work involved in the said writ petition shall be re-tendered and if it is found in the proceedings that the petitioner is not liable to be blacklisted, the work shall be awarded to the Joint Venture of the petitioner. Despite the said direction in Ext.P31 judgment, no steps were taken to blacklist the petitioner and the work was awarded to the Joint Venture of the petitioner as is evident from Ext.P32. The petitioner further submits that subsequently, works have been awarded to the petitioner, as is evident from Exts.P33 to P40. While so, the 3rd respondent issued Ext.P42 notice directing the petitioner to appear before the 3rd respondent to attend a hearing regarding the initiation of the process of blacklisting the petitioner in connection with the irregularities found in the construction of Palarivattom Flyover. Since Ext.P42 did not state the particular grounds for the initiation of black listing proceedings, the petitioner approached this Court in W.P(C) No.5722 of 2023 seeking to quash Ext.P42 and this Court was pleased to dispose of the writ petition as per Ext.P44 judgment directing the Superintending Engineer, PWD to provide the details with respect to the blacklisting procedure adopted by the respondents, so as to enable the petitioner to file a suitable reply. Pursuant to Ext.P44, the 3rd respondent issued Ext.P45 notice stating the reasons for initiating blacklisting proceedings against the petitioner and giving 3 weeks' time to prefer an appropriate reply to the said notice. Thereupon, the petitioner submitted Ext.P46 reply to the same. Petitioner submits that Ext.P45 notice was issued only to harass the petitioner and the same is ill-motivated. The 3rd respondent has no authority to issue the same when the subject matter of the dispute is pending consideration before the competent Civil Court. Ext.P45 is issued only as an eyewash and to cause hardship to the petitioner. Without considering any of the contentions in a proper manner, by Ext.P49 order, it was decided to blacklist the petitioner in connection with the irregularities in the construction of the Palarivattom Flyover and the petitioner was barred from quoting for another work for a period of five years and the "A" class license issued to the petitioner was also cancelled. The petitioner submits that the Government acted arbitrarily, and capriciously against the interest of the public by engaging to demolish the bridge without any supporting materials. The materials already available on record eloquently speak of rehabilitation of the bridge and the decision to demolish flyover is malafide and with sinister motives.

Exts. P45 and P49 are also another move which is politically motivated and leaving the petitioner a scapegoat to it. The petitioner has undertaken various works in the State of Kerala and the same are in progress and any coercive action by virtue of Ext.P45, which itself is without any authority, would cause great hardship and financial loss to the petitioner. Initiation of action as is evident from Ext.P49, while civil suits in this regard are pending consideration before the competent court is an arbitrary action. Ext.49 is a non-speaking order issued without any application of mind and was passed on compulsion since RBDCK apparently recommended the blacklisting of the petitioner. There was no subjective satisfaction on the part of the 3rd respondent for blacklisting and the 3rd respondent has just followed the recommendations of the RBDCK to blacklist the petitioner. None of the contentions taken by the petitioner in Ext.P46 reply was taken into consideration while issuing Ext.P49. The 3rd respondent did not take into consideration that a substantial portion of the repair work was carried out by the petitioner and that the balance work in respect of one expansion work was abruptly stopped by the RBDCK and therefore the petitioner cannot be held responsible for the same. The petitioner further submits that in Ext.P23 counter affidavit, the consultant KITCO had disowned the report of Dr. E. Sreedharan and also the decision to forgo the load test and to demolish the flyover. The petitioner has executed all the works undertaken so far to the full satisfaction of the employer and has earned goodwill and reputation throughout the country. Exhibit P49 is ill-motivated solely to tarnish the reputation of the petitioner for the illegal gains of the respondents. In support of the contentions, the petitioner relies on the judgments in Commissioner of Police, Bombay v. Gordhandas Bhanji (1952 KHC 291), Mohinder Singh Gill and Another v. The Chief Election Commissioner, New Delhi and others (1978 KHC 478), Chairman and Managing Director, United Commercial Bank and Ors. v. P. C. Kakkar (2003 KHC 971), U. O. I. and others v. Jai Prakash Singh and another (2007 KHC 4322), Kulja Industries Limited(M/s) v. Chief General Manager, W. T. Proj.BSNL and others (2013 KHC 4798), Tulsi Narayanan Garg v. M. P. Road Development Authority (2019 SCC online SC 1158), Ramsons Garments Finishing Equipments Pvt. Ltd(M/s.), Bangalore v. Government of India, Ministry of Railways (2022 KHC 5175) and the decision in Abcon Engineering(M/s) v. Superintendent of Engineer [2023 (4) KHC 501].

3. A detailed counter affidavit has been filed on behalf of the 3rd respondent wherein it is stated that Ext.P49 order has been issued by the licencing authority after properly assessing the allegations raised by the implementing authority RBDCK and after hearing the arguments of the petitioner against the blacklisting as per the directions of this Court and thereupon arrived at a decision to proceed with the blacklisting and cancellation of the licence issued by the licence issuing authority. Ext.P49 was issued considering the irregularities in the construction of the Palarivattom Flyover and the same was mentioned in the order itself. The order issued was not to damage the reputation and goodwill earned by the contractor in accepting other projects but only as per the terms of prevailing rules and conditions of the contract. This blacklisting and licence cancellation

need not affect other ongoing works of the petitioner and they can continue with the ongoing works to full satisfaction of the respective agreement authorities. Irregularities in connection with the work were noticed in the year 2019. The implementing agency of the work ie., RBDCK reported the allegations and intimated the recommendation to blacklist the contractor to the Government on 06.11.2020. The subject work was awarded under the SPEEID project of the Government of Kerala and aided by the fund of KRFB. There were defects noticed in the construction undertaken by the petitioner, but the petitioner did not turn up to rectify the defects of the project in time. The vigilance enquiry report submitted to the Government concluded that the flyover is in a dangerous condition. Even though rectification works under the supervision of IIT Madras were done, it was found that there is every chance that the flyover will become a threat to the life and property of the public at any time. Therefore, the Government had no other option but to engage other competent agency to rectify the defects and recover the cost of rectification from the defaulted contractor, which is specifically mandated as per the general condition of the contract. The Vigilance and Anti-Corruption Bureau has also reported as per Ext.R3(c) report that there are serious irregularities on the part of the contractor in the construction of the project. The Government engaged a technical evaluation Committee to assess the proposals of rehabilitation submitted by the IIT Madras and DMRC and the proposal submitted by the DMRC ensured a guarantee period of 100 years to the bridge, which was not present in the proposal submitted by IIT Madras. Thereupon, the Government approved the recommendation of the technical committee and opted for the proposal of the DMRC. As per the general conditions of the contract, if the contractor does not satisfactorily rectify the defects, the executing agency can depute any other agency and recover the cost of rectification from the defaulting contractor. The contractor has filed W.P. (C)No.30487/2019 and the interim order granted in the said case prevented the Government from taking any coercive steps against the contractor including blacklisting. Due to the pendency of the case, Government could not go ahead with the blacklisting procedure. Later as per the judgment dated 04.02.2022, this Court dismissed the said writ petition as withdrawn with liberty to the petitioner to raise the contentions before the civil court. Thereupon, proceedings were initiated to blacklist and to cancel the license of the contractor. Since blacklisting proceedings and the coercive steps, to be taken against the petitioner were stayed by this Court, further works tendered by the petitioner were considered on merits and works were awarded to them. Ext.P49 order has been issued after complying with all the procedures mandated and following the principle of natural justice. The petitioner was issued with notice and given sufficient time for submitting his reply and after considering the reply submitted by the petitioner, Ext.P49 order has been issued and the contract licence was cancelled on account of poor workmanship as reported by RBDCK. Petitioner never turned up to rectify the damages to the Palarivattom Flyover to the satisfaction of the agreement authority. The contention of the petitioner that though they were ready to rectify the defects, RBDCK never acceded to any of

the proposals and committed inordinate delay is not true to the facts. It is the case of RBDCK that despite notice and report submitted by IIT Madras regarding the rectification works, which is notified to the petitioner, rectification works were not attended by him, but at the same time under the pretext of the objection to the report submitted by IIT Madras, petitioner has not complied with their contractual obligations. It is clear from the report submitted by the RBDCK and also Ext.R3(c) report submitted by the Vigilance and Anti Corruption Bureau, that only by reconstruction of the bridge to the extent required, it cannot be put to use. Further contention of the petitioner that clause 2116.2 of the PWD manual does not contemplate blacklisting of the petitioner/contractor in the above-said circumstances of the case, cannot be accepted since pursuant to the directions issued by this Court in W.P.(C) No.21597/2017, "poor workmanship" also has been incorporated in the Manual as per Ext.R3(d) Government order, as a reason for blacklisting the contractors and on the basis of the said contentions raised in the counter affidavit sought for dismissal of the writ petition.

4. Heard the rival contentions on both sides.

5. The thrust of the contentions raised by the petitioner challenging Ext.P49 is that the defects, if any noticed by the petitioner, were intimated to the RBDCK as per Exts.P6 and P7 and there was no response from them in this regard and that even the report of IIT Madras only recommended for rehabilitation of the flyover since the flyover was not in such distress so as to be demolished. It could be seen that after obtaining the inspection report and remedial measures suggested by IIT Madras, the Government of Kerala sought for a clarification from Dr. E. Sreedharan, the Principal Advisor of DMRC and he has submitted a report dated 03.07.2019 before the Government for rehabilitation of the bridge by dismantling 17 RCC spans and to replace with PSC girders. As there were two conflicting reports, the Government thought it fit to constitute a committee to examine the reports of IIT Madras and Dr. E. Sreedharan and a report to that effect was submitted on 04.10.2019. The Government after verifying both the reports, issued Ext.P17 order, wherein the issues raised in this writ petition have been elaborately considered. The relevant portion of the said report is extracted below:

"IIT Madras explored the possibility of repairing and strengthening the precast RC girders using (i) Concrete jacketing. (ii) Steel jacketing, (iii) External flexural strengthening using CFRP composite pultruded sheets, (iv) Strengthening of girders by near surface mounting (NSM) technique using CFRP composite pultruded sheets, (v) Strengthening of girders by NSM technique using pultruded CFRP composite rebars and (vi) Shear strengthening using carbon fibre fabric composites. The possibility of repairing and strengthening the Piers using (1) Carbon fibre fabric composites and (2) and Concrete jacketing are also explored. Considering the durability, cost and time to repair and strengthen the precast RC girders the following repair and strengthening scheme is recommended by IIT Madras:

a) Repairing of cracks in precast RC girders and pier caps by injecting low viscous

resin.

- b) Flexural strengthening of precast RC girders by concrete jacketing.
- c) Shear strengthening of precast RC girders using carbon fiber fabric composites.
- d) Cross stiffening of precast RC girders using standard steel sections and
- e) Repairing of cracks on RC walls in the abutments

The total estimated cost for the above mentioned scheme is Rs. 7.31 crores, IIT Madras will issue the execution drawings as per the requirement. Scaffolding, water supply and power supply have to be provided as per the site conditions by RBDCK/RDS. After repair and strengthening a span and two pier caps, a load test to be conducted and the measured deflection can be checked with the allowable limit to ensure the safety of the bridge. Strict quality control to be ensured during repair and strengthening of the Flyover. All safety procedures for manpower and machines to be ensured by the Applicators"

4. On the basis of press statement made by Dr.E,Sreedharan on the issue, Government have discussed the matter with him. On the basis of discussion he inspected the bridge site and examined the IT report and submitted a report to Government as read 5 above. In the report he noted the following points

"The cost of repairs appears to be underestimated. For example, repairing the cracks by resin injection is shown to cost only Rs 28.00 lakhs. This would certainly cost much more as 97 out of 102 girders have developed multiple cracks. Drilling for too many holes for resin injection may further weaken the concrete whose strength is already low and uncertain

Shear strengthening of RC girders using carbon fibre wrapping may not bring in the expected benefit as such wrapping does not confine the concrete. If the parent material strength is less than the permitted limit, the wrapping may become a failure. In this case, carbon fibre wrapping alone may not give the required shear strength. The technology of carbon fibre wrapping is new to the country and its life expectancy is also uncertain. They have not mentioned anything about the protection needed for the carbon fibre wrapping since the resins are not stable against ultra violet exposure.

To make up the deficiency in surface reinforcement, nothing is mentioned in the report.

Only the bottom flanges of the RC girders are strengthened by 100mm micro concrete jacketing. The side concrete has no reinforcement shown. This may spall off after some time due to vibration.

Nearly 16 tonne weight is adding in each span for retrofitting scheme. This extra weight (approx. 3 tonne weight in one single girder) will create additional bending moment and shear force in existing distressed girders. Any increase in dead load is not desirable as the four piles in foundation are at their limits.

The concrete jacketing of pier heads has to be more robust to increase their structural strength.

Since the concrete used in the bridge is generally found weak, the stem of the piers has also to be jacketed by RCC. This has not been indicated nor its cost accounted for IIT scheme has not eliminated the expansion joints over the pier locations. The dynamic impact at these joints will therefore continue Dr.Sreedharan has also pointed out that IIT has not indicated what would be the residual life of the bridge after repairs.

Pointing out the above discrepancies noticed in the IIT report, Dr.E.Sreedharan suggested to dismantle all the RCC girder spans and replace with pre stressed girders for increased life expectancy of the bridge as indicated in his letter read as 4th above

5. In the light of the above conflicting opinion government decided to constitute a technical committee to examine the reports submitted by IIT Madras and Dr E Sreedharan, and to submit a report to Government. As per government orders read as 2nd above Government have constituted a technical expert committee for this purpose Vide report read as 7th above Technical Expert committee furnished the following recommendations

"The tests carried out by IIT Chennai are as per IS codes and IRC recommendations. IIT Chennai being a premier and reputed institution, their findings can be accepted and relied on. However, a load test as specified in IRC 112:2011 has not been proposed by IIT Chennai. The reasons are not mentioned in their report. The Committee feels that since crack width in certain girders have exceeded the allowable limits which is one of the compliance criteria for load test, IIT might have decided that there is no point in doing a load test before strengthening. However, IIT has recommended load test after strengthening the flyover. IIT has suggested its scheme for strengthening the flyover, which again is as per IRC recommendations. But, IIT has not mentioned the service life of the flyover after strengthening. IRC also does not recommend service life of any structure after doing the strengthening works proposed by IIT.

As mentioned by Dr. E.Sreedharan a new construction with proper design, with quality execution of the work with quality materials and strict technical supervision can expect a service life of 100 years.

Construction cost of the proposal of demolishing and replacing of superstructure as proposed by Dr. E.Sreedharan will cost (18.71 crores), more than double the cost estimated for the strengthening scheme proposed by IIT (7.31 crores). The required completion time for both cases is almost the same. Normally rehabilitation/ strengthening are required for old as well as distressed bridges having service life of 40 years or more and also strengthening works are normally required for limited members or locations of a flyover/bridge. In the case of Palarivattom flyover as per the findings of IIT Chennai, 97 RCC girders out of 102 girders requires strengthening which is an extensive strengthening

work for superstructure. Based on the all the above factors, Committee is of the opinion that considering the service life assured by Dr. E. Sreedharan for 100 years, it is better to accept the proposal by him."

6. Government have examined the whole matter in detail and have decided to accept the recommendations of the Technical Committee and to proceed accordingly.

It is also decided to accept the letter of offer made by Delhi Metro Rail Corporation to take over the bridge for rehabilitation as per letter read as 6th above. DMRC shall submit detailed item wise estimate for approval of Government. On the basis of the detailed estimate, Finance Department shall allot funds in the appropriate Head of Account for the purpose. RBDCK will hand over the bridge site to DMRC free of all encumbrances.

7. RBDCK shall realize the loss sustained to the Government from the contractor in the light of the report of IIT Madras, report of Dr.E Sreedharan and the FIR filed in case No. 1/2019 of Moovattupuzha Vigilance Court and as per the relevant provisions of the agreement. RBDCK shall also initiate action against the contractor for the lapses as per PWD Manual

A perusal of Ext.P17 would reveal that Dr. E. Sreedharan's report in this regard was on the basis of an inspection conducted by him at the bridge site and not as contended by the petitioner that the said report has been submitted without any study or even an inspection. As per the report of IIT Madras, 97 out of 102 girders have developed multiple cracks and drilling too many holes for resin injection may further weaken the concrete whose strength is already low and uncertain and thereupon Dr. E. Sreedharan suggested dismantling all RCC girder spans and to replace with pre-stressed girders for increased life expectancy of the bridge. A perusal of Ext.P17 would also reveal that the technical committee was constituted in the light of the conflicting opinion by the IIT, Madras and Dr. E. Sreedharan. The technical committee has found that even though IIT Madras has recommended certain rectification methods, they have not suggested for a load test and the committee after examining the same, opined that since crack width in certain girders has exceeded the allowable limits which is one of the compliance criteria for load test, IIT might have decided that there is no point in doing a load test before strengthening and recommended for a load test after the strengthening is over. The technical committee appointed by the Government found that the IIT has not mentioned the service life of the flyover after strengthening, whereas in Dr. E.Sreedharan's report, new construction with proper design with quality execution of the work with quality materials and strict technical supervision can expect a service life of 100 years. The committee further examined that the required completion time for both rectification work and the demolition and replacing the superstructure as proposed by Dr. E. Sreedharan takes almost the very same time limit. The committee after examining both reports came to the opinion that normally rehabilitation/strengthening is required for old as well as distressed bridges having service life

of 40 years or more and also strengthening works are normally required for limited members or locations of a flyover/bridge and in the case of Palarivattom flyover as per the findings of IIT Madras, 97 RCC girders out of 102 girders requires strengthening which is an extensive strengthening work for a superstructure. Based on all the above factors, Committee opined that considering the service life assured by Dr. E. Sreedharan for 100 years, it is better to accept the proposal by him and the said findings and recommendations of the technical committee were accepted by the Government as per Ext.P17. In Ext.P17, there was a further direction that RBDCK shall initiate action against the contractor for the lapses as per the PWD manual. A perusal of Ext.P17 would reveal that Dr. E. Sreedharan has submitted the report after conducting a thorough study and after conducting a site inspection. One crucial aspect is to be noted that even going by the report of the IIT Madras, 97 RCC girders out of 102 girders require strengthening. The serious damage affecting to almost 97 RCC girders out of 102 girders, is a very serious aspect to be taken note of, especially in the case of a bridge the construction of which was completed only during 2016 and Ext.P17 report is in 2019, almost after a period of three years. The Government while issuing Ext.P17 did not automatically accept the report of Dr. E. Sreedharan. It is also to be noted that Ext.P17 was challenged by the petitioner by filing W.P.(C) No.30487/2019. Though initially there was a stay of coercive action including attachment of the bank account of the petitioner, the said writ petition was disposed of as per judgment dated 04.02.2022, wherein the petitioner sought dismissal of the writ petition as withdrawn with liberty to the petitioner to raise all legal and factual contentions available, before the civil court. Though a suit has been filed by the petitioner as C.S. No.80/2021 wherein a challenge is also made against Ext.P17 and Ext P21 Government Orders, no interim order has been granted. In view of the above, the decision of the Government as per Ext.P17 order whereby the Government has decided to accept the report of Dr. E. Sreedharan and to take coercive action against the petitioner as per the PWD manual is after conducting a proper study and in accordance with the law.

6. Another contention raised by the petitioner is that the petitioner has been entrusted with the other contract works even after the defects were noticed by the Government in respect of the Palarivattom flyover. The specific contention of the learned Government Pleader in the counter affidavit is that after issuance of Ext.P17, whereby direction was issued to RBDCK to initiate action against the contractor/petitioner for lapse as per PWD manual, further action was stayed as per Ext.P18 interim order dated 12.11.2019 in W.P.(C) No.30487/2019 and the said writ petition was disposed of only as per order dated 04.02.2022 and it is only for the reason that the impugned order has been stayed by this Court, the petitioner was permitted to undertake another works tendered by him. In view of the same, the said contention raised by the petitioner is only to be rejected.

7. Further contention raised by the petitioner is that if any defect has been noticed as per the general conditions of the contract, the petitioner ought to have

been entrusted the duty of remedying the defects and since the same has been entrusted to the third agency, the petitioner cannot be held liable for any loss sustained. The learned Government Pleader on the strength of the counter affidavit would submit that it is informed by the RBDCK that despite notice and reports submitted by IIT Madras, regarding the rectification work notified to the petitioner, the rectification works were not attempted by him, but at the same time under the pretext of an objection to the report submitted by IIT Madras, petitioner has not complied with the contractual obligations and it is in the said circumstance that further rectification work was entrusted to a third party, which is well within the power of the Government and the Departmental authorities to do so. In view of the same, the contention taken by the petitioner in this regard is only to be repelled.

8. Yet another contention raised by the petitioner is that while issuing Ext.P49, there is total non-application of mind and Ext.P45 show cause notice was issued only based on the decision of RBDCK to blacklist the petitioner. A perusal of Ext.P45 would reveal that in the 85th meeting held on 14.10.2020 by the Board of Directors of RBDCK, the Board decided to furnish certain recommendations to the Government, which is extracted below.

Blacklisting of Contractor

The contractor M/s RDS Projects Ltd is to be blacklisted on grounds of poor workmanship and bar them from taking part in the future tenders of this company and request that Government may issue directions to the concerned license issuing departments /authorities for actions as per PWD Manual to cancel the license of the firm

2. Realisation of Rehabilitation Cost

RBDCK intends to recover the costs from the Contractor based on

- a) Cost estimated for the strengthening scheme proposed by IIT
- b) Construction cost of the proposal of demolishing and replacing of superstructure
- c) Loss sustained to Government as per the FIR filed in case No.1/2019 of Muvattupuzha Vigilance Court.

It is also pertinent to note that in Ext.P17 the Government while entrusting rehabilitation works to DMRC has also directed the RBDCK to initiate action against the contractor for the lapse as per the PWD Manual and it is based on the same that the RBDCK has decided to take steps to blacklist the contractor for poor workmanship. It is pursuant to the said recommendation that the details of the allegation against the petitioner was submitted by the 3rd respondent as per Ext.P45, which contains all the details of the allegations against the petitioner. It is seen that a detailed reply was also submitted by the petitioner as Ext.P46 and only after considering the same that Ext.P49 decision was taken, which is

impugned in this writ petition. I am unable to accept the argument of the learned Senior Counsel appearing for the petitioner that it is solely based on the decision of the RBDCK that further proceedings were initiated to blacklist the petitioner. It is true that RBDCK has recommended for blacklisting the contractor but it is for the 3rd respondent who is the licencing authority to take action for blacklisting and for cancellation of PWD contractor's licence. Thereafter, it could be seen that 3rd respondent has issued show cause notice and details of allegations against the petitioner and thereafter objections were called for and it is only considering the objections filed by the petitioner that Ext.P49 order was issued. Only for the reason that one of the authorities has recommended for taking action against the petitioner will not by itself invalidate the proceedings on the ground that the same was initiated as per the dictation of another authority and therefore there is total non application of the mind. As stated above, Ext P49 order was issued by the competent authority, the 3rd respondent, after complying with all the procedural formalities. The learned Government Pleader relies on the judgment in *State of Odisha and others v. Panda Infra Project Ltd* [(2022) 4 SCC 393]. Paragraph 17 of the said judgment reads as follows:

17. Merely because the show-cause notice was issued after the inquiry committee report was considered and thereafter the State Government took the decision to initiate proceedings for blacklisting, that by itself cannot be said that the order of blacklisting was pre-determined as observed by the High Court. The communication dated 10-10-2017 by the State Government to the Chief Engineer can be said to be a proposed decision to initiate the proceedings for blacklisting. In the communication dated 10-10-2017, it has been specifically mentioned that the action be taken for blacklisting after following the procedure as per the OPWD Code.

In view of the same, I am not inclined to accept the said contention of the petitioner that there is no application of mind before issuance of Ext.P49 and that the 3rd respondent acted solely based on the report/recommendation of the RBDCK.

8. Further contention raised by the petitioner is that this is a disputed question of fact and that civil suits are pending, one filed by the petitioner and the other by the RBDCK and therefore, while the suits are pending consideration, the decision taken by the Government to blacklist the petitioner as per Ext.P49 is arbitrary and unjust. In support of the contention, the petitioner relies on the judgment in *Tulsi Narayan Garg's case* cited (Supra). That was a case where the question decided was as to whether the liquidated damages assessed by the officer could be recovered when the matter is pending adjudication before the Arbitral Tribunal and the court held that since once the dispute is pending adjudication before the Arbitral Tribunal, the respondent was not justified in raising demand on termination of the contract, claiming liquidated damages and the respondent cannot become an arbiter of his own cause and unless the dispute is settled by a procedure prescribed under the law, the respondent would not be held to be

justified in initiating revenue recovery proceedings invoking the procedure under the Land Revenue Act. I am afraid the said judgment cannot apply in the facts and circumstances of the present case because that was a case where the court was considering whether any revenue recovery proceedings could be initiated based on the quantification of liquidated damages assessed by the officer while the said dispute was pending consideration before the Arbitral Tribunal. The present case is one which where the petitioner was blacklisted after complying with due procedures as prescribed by law and therefore, the said judgment is not applicable in the facts and circumstances of the present case.

9. The petitioner has taken a further contention that Ext.P49 is not a reasoned order and there is no subjective satisfaction on the part of the 3rd respondent for blacklisting the petitioner. Petitioner further contended that the punishment imposed is harsh and therefore, the same is liable to be interfered with. In support of his contention, the petitioner relies on the judgment in Gordhandas Bhanji & Mohinder Singh Gill's cases cited (Supra) which held that reasons should be stated in the order itself and the same cannot be substituted by way of averments in the counter affidavit. The petitioner also relies on the judgment in Chairman and Managing Director, United Commercial Bank and Others' case cited (Supra) to contend for the position that if the court feels that the punishment is shockingly disproportionate, the same is liable to be interfered with. The petitioner further submits on the basis of the decision in Kulja Industries Ltd 's case cited (Supra) that before the authority passes an order of blacklisting, is required to give a fair hearing and since none of the contentions raised by the petitioner was properly considered, Ext.P49 order is liable to be interfered with. The petitioner also relies on the judgment in Jai Praksh Singh and another's case cited (Supra) in support of the said contention. Petitioner also relies on the judgment in Abcon Engineering's case (Supra) to contend for the position that the show cause notice should contain the details of the allegation against which the blacklisting is proposed and since the show cause notice does not disclose any of the reasons for initiating blacklisting proceedings against the petitioner, the decision as per Ext.P49 is liable to be interfered with. Petitioner also relies on the judgment in Ramson Garment Finishing Equipments Pvt. Ltd, Bangalore's case (Supra) that due to the severity of the effects of blacklisting, the law requires strict adherence to the principle of natural justice and that in an action of blacklisting the person/entity concerned is required to be duly notified of the charges levelled against him/it and the consequences that may follow if the charges are proved, give adequate opportunity to the person/entity against whom such allegations are made to put forth his/its say and the order under which blacklisting is imposed should disclose adequate reasons for imposing such punishment after considering/dealing with the various responses/explanations given by the person/entity against whom the allegation is made. I am of the opinion that none of the decisions cited supra could come to the help of the petitioner. Though Ext.P17 order which recommended RBDCK to initiate action against the petitioner for the lapses as per PWD manual, was challenged before

this Court in W.P.(C)No.30487/2019, the same was ultimately dismissed as withdrawn and no interim orders were granted by the civil court wherein Ext.P17 order was subsequently challenged after the dismissal of the writ petition. Another important aspect to be considered is that even though the petitioner approached this Court seeking for a load test to be conducted and the same was allowed as per Ext.P19 order of this Court, the Apex Court interfered in the matter and set aside Ext.P19 as per Ext.P20 judgment and paragraph 8 and 9 of the said judgment reads as follows:

8) Having perused the High Court judgment, what is clear is that the High Court, instead of applying the well-established parameters of judicial review and ascertaining whether the decision of the State Government would violate Article 14, went into the matter itself and stated that it is better to have a "load test conducted to avoid any further controversy in the matter".

9) Given the fact that an Expert Committee, which is a High level Committee of five experts was set up to go into the divergent opinions of IIT Madras and Dr. E. Sreedharan, and the experts having come to a particular conclusion, it is very difficult then to say that the Government, in accepting such Expert Committee Report, could be said to have behaved arbitrarily. On this ground alone, we set aside the judgment of the High Court, as also the review judgment.

Therefore, the Apex Court has also accepted the decision of the Government in Ext.P17 order which is based on a high-level technical committee report. It is only thereafter that Ext.P29 order was issued by the Government whereby administrative sanction was granted to undertake rehabilitation work of the Palarivattom flyover at Ernakulam through DMRC and a direction was issued to RBDCK to initiate proceedings for recovery of the cost of the rehabilitation work from the petitioner. It is seen that Ext.P42 notice of hearing was issued to the petitioner. Thereupon, the petitioner approached this Court filing W.P.(C) No.5722/2023 which was disposed of as per Ext.P44 judgment directing the respondent licensing authority to provide the details with respect to the blacklisting procedure adopted by the respondent so as to enable the petitioner to file a suitable reply and to grant 3 weeks' time to file a proper reply. Pursuant to the directions in Ext.P44, Ext.P45 detailed allegations against the petitioner was submitted by the 3rd respondent and has granted 3 weeks' time to file an appropriate reply. The petitioner thereafter submitted Ext.P46 reply to the allegations raised in Ext.P45. It is only after considering the objections submitted by the petitioner that a decision was taken as per Ext.P49 to blacklist the petitioner on the ground of 'poor workmanship' and for the reason that the petitioner did not rectify the damages that occurred to the Palarivattom flyover.

10. After considering all these aspects and after hearing both sides, I am of the opinion that sufficient opportunity has been granted to the petitioner to explain his case and only thereafter that Ext.P49 was issued and valid reasons have been stated by the authority to blacklist the petitioner. It is also pertinent to note that pursuant to the judgment of this Court in W.P.(C) No.21597/2017, as per

Ext.R3(d) Government Order, the Government have taken steps to amend the PWD manual to include 'poor workmanship' as also a reason to blacklist a contractor. I am of the considered opinion that the said ground is very much available with the respondents to blacklist the contractors inasmuch as the damage has been caused to the bridge within 3 years after its construction. There is a clear finding in the report of the experts that normally rehabilitation/strengthening is required for old as well as distressed bridges having service life of 40 years or more and also strengthening works are normally required for limited members or locations of a flyover/bridge. Going by the report of IIT Madras itself, 97 RCC girders out of 102 girders require strengthening, which is an extensive strengthening work for a super structure. It is taking all these aspects into consideration, the Government decided to demolish that portion of the bridge and to reconstruct the same and also to initiate coercive steps against the petitioner.

11. It is pertinent to note that the Government has expended a huge amount from the state exchequer for the construction of the bridge which is nothing but the tax payers' money. Damages of very serious nature have been found by the experts in the said flyover within a short span of 3 years from its construction. Ultimately the Government as per the advice of the expert had to demolish a portion of the bridge and reconstructed the same again expending a huge amount from the tax payer's money.

Taking all these aspects into consideration and on a finding that Ext.P49 order has been issued after complying with all procedural formalities, I am of the opinion that the action initiated by the Government as per Ext.P49 to blacklist the petitioner is perfectly in accordance with law and I find no reason to interfere with the same and the above writ petition is accordingly dismissed.